

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION**

**LEWIS E. KNAPPER and
LINDA KNAPPER,**

Plaintiffs,

v.

**SAFETY KLEEN SYSTEMS, INC.,
et al.**

Defendants.

§
§
§
§
§
§
§
§
§
§
§

**CIVIL ACTION FILE NO. 9:08-CV-0084
JURY DEMANDED**

**DEFENDANTS UNITED STATES STEEL CORPORATION, USX CORPORATION,
ARISTECH CHEMICAL CORPORATION, SUNOCO, INC. (R&M), AND
RADIATOR SPECIALTY COMPANY’S UNOPPOSED MOTION FOR LEAVE
TO FILE THEIR RESPONSE TO PLAINTIFFS’ *DAUBERT* MOTION TO STRIKE
EXPERT JOHN SPENCER IN EXCESS OF FIFTEEN PAGES**

TO THE HONORABLE JUDGE HEARTFIELD:

Defendants United States Steel Corporation, USX Corporation, Aristech Chemical Corporation, Sunoco, Inc. (R&M), and Radiator Specialty Company (collectively “Defendants” or “US Steel”) file this Unopposed Motion for Leave to File their Response to Plaintiffs’ *Daubert* Motion to Strike Expert John Spencer in Excess of Fifteen Pages.

I.

This is an alleged benzene exposure case. For the following reasons, US Steel respectfully requests that this Court allow it to file its response to plaintiffs’ *Daubert* motion to strike expert John Spencer in excess of fifteen pages:

- US Steel’s expert on industrial hygiene issues is John Spencer, CIH. His opinions involve the determination of the evaporation rate of benzene from a product called Liquid Wrench, which plaintiff Lewis Knapper allegedly used.
- In his written report in this case, Mr. Spencer opined that the cumulative exposure estimate supplied by plaintiffs’ expert, Stephen Petty, was incorrect because Petty assumed an overly prolonged evaporation rate of benzene. To

support this opinion, Mr. Spencer conducted a study to determine the evaporation rate of benzene from Liquid Wrench (“Evaporation Rate Study”).

- In its response to plaintiffs’ motion to strike Spencer, US Steel fully explains the Evaporation Rate Study and its applicability in this case under *Daubert*, as well as clarifying plaintiffs’ misstatements about the reliability of the study and Mr. Spencer’s opinions.
- In addressing these complicated issues, US Steel’s response exceeds the 15-page limit by only $\frac{2}{3}$ of a page.

II.

The Evaporation Rate Study and its components are not easily explained. Nevertheless, US Steel’s response addresses these issues with clarity and with as much brevity as possible. US Steel respectfully asks this Court allow it the opportunity to present a complete response to plaintiffs’ arguments against the evaporation study and Mr. Spencer’s opinions.

III.

Contemporaneous with this motion for leave, US Steel is filing its response, which is attached as Exhibit A for the Court’s convenience.

IV.

Plaintiffs are unopposed to the relief requested in this Motion for Leave.

PRAYER

ACCORDINGLY, Defendants United States Steel Corporation, USX Corporation, Aristech Chemical Corporation, Sunoco, Inc. (R&M), and Radiator Specialty Company respectfully ask this Court to grant their Unopposed Motion for Leave to File their Response to Plaintiffs’ *Daubert* Motion to Strike Expert John Spencer in Excess of Fifteen Pages, and for such other and further relief, both general and special, at law or in equity, to which they may show themselves justly entitled.

Respectfully submitted,

By: 

TIM GRAY

State Bar No. 24030230

PHILLIP S. SYKES

Pro Hac Vice

LEA ANN SMITH

Pro Hac Vice

PATRICE PUJOL

State Bar No. 00794488

OF COUNSEL:

FORMAN PERRY WATKINS KRUTZ & TARDY LLP

1717 St. James Place, Suite 600

Houston, Texas 77056

Telephone: (713) 402-1717

Facsimile: (713) 621-6746

GrayT@fpwk.com

PujolP@fpwk.com

FORMAN PERRY WATKINS KRUTZ & TARDY LLP

200 South Lamar Street, Suite 100

Jackson, Mississippi 39201

Telephone: (601) 960-8600

Facsimile: (601) 960-8613

PSykes@fpwk.com

– And –

By:  / *by permission*

JAMES RILEY

State Bar No. 16931800

COATS | ROSE, LLP

3 Greenway Plaza, Suite 2000

Houston, Texas 77046-0307

(713) 651-0111

(713) 651-0220 (Facsimile)

**ATTORNEY IN CHARGE FOR DEFENDANT
RADIATOR SPECIALTY COMPANY**

ORGAIN, BELL & TUCKER, L.L.P.

GILBERT I. LOW

State Bar No. 12619000

S. DONEAN SURRATT

State Bar No. 01720400

470 Orleans Street

P.O. Box 1751

Beaumont, Texas 77704-1751

Telephone: 409-838-6412

Facsimile: 409-838-6959

sds@obt.com

ATTORNEYS FOR DEFENDANTS

UNITED STATES STEEL CORPORATION

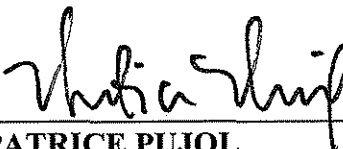
USX CORPORATION, ARISTECH CHEMICAL

CORPORATION, SUNOCO, INC. (R&M) AND

RADIATOR SPECIALTY COMPANY

CERTIFICATE OF CONFERENCE

I hereby certify that I conferred with plaintiffs' attorney, Mr. Robert Black, via email on August 7, 2009 about this Motion for Leave to File a Response to Plaintiffs' *Daubert* Motion to Strike Expert John Spencer in Excess of Fifteen Pages, and that Mr. Black responded via email stating plaintiffs were not opposed to the relief sought in this motion for leave.


A handwritten signature in cursive script, appearing to read "Patrice Pujol", is written over a horizontal line.

PATRICE PUJOL

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served on plaintiffs' lead counsel listed below and on all other counsel of record via the CM/ECF system or other means in accordance with the FEDERAL RULES OF CIVIL PROCEDURE on this the 7th day of August 2009.

Messrs. Lance Lubel, John M. Black, and J. Robert Black (*Via CM/ECF*)

HEARD ROBINS CLOUD & LUBEL, LLP

3800 Buffalo Speedway, 5th Floor

Houston, Texas 77098

Lead Counsel for Plaintiffs


A handwritten signature in cursive script, appearing to read "Patrice Pujol", is written over a horizontal line.

PATRICE PUJOL